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VIZIO, INC.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

POLARIS POWERLED
TECHNOLOGIES, LLC,

Plaintiff,

v.

VIZIO, INC.,

Defendant.

Case No. 8:18-cv-01571-JVS (DFMx)

**STIPULATED PROTECTIVE
ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. This Order does not confer blanket
6 protections on all disclosures or responses to discovery and the protection it affords
7 from public disclosure and use extends only to the limited information or items that
8 are entitled to confidential treatment under the applicable legal principles.

9 2. DEFINITIONS

10 2.1 Challenging Party: a Party or Non-Party that challenges the
11 designation of information or items under this Order.

12 2.3 Counsel: Outside Counsel of Record (as well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as “HIGHLY
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY,” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE.”

17 2.5 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in disclosures or responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who (1) has been retained by a Party or its counsel to
23 serve as an expert witness or as a consultant in this action, (2) is not a past or
24 current employee of a Party, and (3) at the time of retention, is not anticipated to
25 become an employee of a Party.

26 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
27 Information or Items: extremely sensitive “Confidential Information or Items,”
28 disclosure of which to another Party or Non-Party would create a substantial risk of

1 serious harm that could not be avoided by less restrictive means. For clarity this
2 designation shall include, at least, a Designating Party's (1) non-public financial
3 information, (2) employee's non-public personal information, and (3) non-public
4 commercial agreements, including license agreements.

5 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or
6 Items: extremely sensitive "Confidential Information or Items" representing
7 computer code and associated comments and revision histories, formulas,
8 engineering specifications, or schematics that define or otherwise describe in detail
9 the algorithms or structure of software or hardware designs, disclosure of which to
10 another Party or Non-Party would create a substantial risk of serious harm that
11 could not be avoided by less restrictive means.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a
15 party to this action but are retained to represent or advise a party to this action and
16 have appeared in this action on behalf of that party or are affiliated with a law firm
17 which has appeared on behalf of that party.

18 2.11 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.13 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.14 Protected Material: any Disclosure or Discovery Material that is
28 designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or

1 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery
3 Material from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Order cover not only Protected Material (as
6 defined above), but also (1) any information copied or extracted from Protected
7 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
8 and (3) any testimony, conversations, or presentations by Parties or their Counsel
9 that might reveal Protected Material. However, the protections conferred by this
10 Order do not cover the following information: (a) any information that is in the
11 public domain at the time of disclosure to a Receiving Party or becomes part of the
12 public domain after its disclosure to a Receiving Party as a result of publication not
13 involving a violation of this Order, including becoming part of the public record
14 through trial or otherwise; and (b) any information known to the Receiving Party
15 prior to the disclosure or obtained by the Receiving Party after the disclosure from a
16 source who obtained the information lawfully and under no obligation of
17 confidentiality to the Designating Party. Any use of Protected Material at trial shall
18 be governed by a separate agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition shall be
23 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. To the extent it is practical to do so, the
6 Designating Party must designate for protection only those parts of material,
7 documents, items, or oral or written communications that qualify – so that other
8 portions of the material, documents, items, or communications for which protection
9 is not warranted are not swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or retard the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection at all or do not qualify for the
17 level of protection initially asserted, that Designating Party must promptly notify all
18 other Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,
26 transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix the legend "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
28 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that

1 contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
4 for each portion, the level of protection being asserted.

5 A Party or Non-Party that makes original documents or materials available
6 for inspection need not designate them for protection until after the inspecting Party
7 has indicated which material it would like copied and produced. During the
8 inspection and before the designation, all of the material made available for
9 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.” After the inspecting Party has identified the documents it wants copied
11 and produced, the Producing Party must determine which documents, or portions
12 thereof, qualify for protection under this Order. Then, before producing the
13 specified documents, the Producing Party must affix the appropriate legend
14 (“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
15 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected
16 Material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s)
18 (e.g., by making appropriate markings in the margins) and must specify, for each
19 portion, the level of protection being asserted.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,
21 that the Designating Party identify on the record, before the close of the deposition,
22 hearing, or other proceeding, all protected testimony and specify the level of
23 protection being asserted. When it is impractical to identify separately each portion
24 of testimony that is entitled to protection and it appears that substantial portions of
25 the testimony may qualify for protection, the Designating Party may invoke on the
26 record (before the deposition, hearing, or other proceeding is concluded) a right to
27 have up to 21 days to identify the specific portions of the testimony as to which
28 protection is sought and to specify the level of protection being asserted. Only those

1 portions of the testimony that are appropriately designated for protection within the
2 21 days shall be covered by the provisions of this Protective Order. Alternatively, a
3 Designating Party may specify, at the deposition or up to 21 days afterwards if that
4 period is properly invoked, that the entire transcript shall be treated as “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 Parties shall give the other parties notice if they reasonably expect a
7 deposition, hearing, or other proceeding to include Protected Material so that the
8 other parties can ensure that only authorized individuals who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
10 proceedings. The use of a document as an exhibit at a deposition shall not in any
11 way affect its designation as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY.”

13 Transcripts containing Protected Material shall have an obvious legend on
14 the title page that the transcript contains Protected Material, and the title page shall
15 be followed by a list of all pages (including line numbers as appropriate) that have
16 been designated as Protected Material and the level of protection being asserted by
17 the Designating Party. The Designating Party shall inform the court reporter of
18 these requirements. Any transcript that is prepared before the expiration of a 21-day
19 period for designation shall be treated during that period as if it had been designated
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
21 otherwise agreed. After the expiration of that period, the transcript shall be treated
22 only as actually designated.

23 (c) for information produced in some form other than documentary and for
24 any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information or item is stored the
26 legend “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
27 “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of
28 the information or item warrant protection, the Producing Party, to the extent

1 practicable, shall identify the protected portion(s) and specify the level of protection
2 being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such
6 material. Upon timely correction of a designation, the Receiving Party must make
7 reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a
12 Designating Party's confidentiality designation is necessary to avoid foreseeable,
13 substantial unfairness, unnecessary economic burdens, or a significant disruption or
14 delay of the litigation, a Party does not waive its right to challenge a confidentiality
15 designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of each designation it is challenging
19 and describing the basis for each challenge. To avoid ambiguity as to whether a
20 challenge has been made, the written notice must recite that the challenge to
21 confidentiality is being made in accordance with this specific paragraph of the
22 Protective Order. The parties shall attempt to resolve each challenge in good faith
23 and must begin the process by conferring directly (in voice to voice dialogue; other
24 forms of communication are not sufficient) within 14 days of the date of service of
25 notice. In conferring, the Challenging Party must explain the basis for its belief that
26 the confidentiality designation was not proper and must give the Designating Party
27 an opportunity to review the designated material, to reconsider the circumstances,
28 and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A Challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first or establishes
3 that the Designating Party is unwilling to participate in the meet and confer process
4 in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
6 court intervention, the Challenging Party may file a motion challenging a
7 confidentiality designation within 14 days of the parties agreeing that the meet and
8 confer process will not resolve their dispute, if there is good cause for doing so,
9 including a challenge to the designation of a deposition transcript or any portions
10 thereof. Any motion brought pursuant to this provision must be accompanied by a
11 competent declaration affirming that the movant has complied with the meet and
12 confer requirements imposed by the preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges and those made for an improper purpose
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
16 expose the Challenging Party to sanctions. All parties shall continue to afford the
17 material in question the level of protection to which it is entitled under the
18 Producing Party's designation until the court rules on the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 case only for prosecuting, defending, or attempting to settle this litigation. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the litigation has been terminated, a
25 Receiving Party must comply with the provisions of section 15 below (FINAL
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2. Intentionally blank.

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
5 Items. Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item
7 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
8 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
10 as employees of said Outside Counsel of Record to whom it is reasonably necessary
11 to disclose the information for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
13 A;

14 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
15 necessary for this litigation, (2) who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth
17 in paragraph 7.4(a)(2), below, have been followed;

18 (c) the court and its personnel;

19 (d) court reporters and their staff, professional jury or trial consultants,
20 and Professional Vendors to whom disclosure is reasonably necessary for this
21 litigation and who have signed the “Acknowledgment and Agreement to Be
22 Bound” (Exhibit A); and

23 (e) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 (f) during their depositions, witnesses in the action to whom disclosure is
26 reasonably necessary and who have signed the “Acknowledgment and Agreement
27 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
28 ordered by the court. Pages of transcribed deposition testimony or exhibits to

depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) requesting permission to disclose to the Expert “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 the preceding five years.

2 (b) A Party that makes a request and provides the information specified in
3 the preceding respective paragraphs may disclose the subject Protected Material to
4 the identified Expert unless, within 7 days of delivering the request, the Party
5 receives a written objection from the Designating Party. Any such objection must
6 set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer
8 with the Designating Party (through direct voice to voice dialogue) to try to resolve
9 the matter by agreement within five days of the written objection. If no agreement
10 is reached, the Party seeking to make the disclosure to the Expert may file a motion
11 seeking permission from the court to do so. Any such motion must describe the
12 circumstances with specificity, set forth in detail the reasons why disclosure to the
13 Expert is reasonably necessary, assess the risk of harm that the disclosure would
14 entail, and suggest any additional means that could be used to reduce that risk. In
15 addition, any such motion must be accompanied by a competent declaration
16 describing the parties' efforts to resolve the matter by agreement (i.e., the extent
17 and the content of the meet and confer discussions) and setting forth the reasons
18 advanced by the Designating Party for its refusal to approve the disclosure.

19 In any such proceeding, the Party opposing disclosure to the Expert shall
20 bear the burden of proving that the risk of harm that the disclosure would entail
21 (under the safeguards proposed) outweighs the Receiving Party's need to disclose
22 the Protected Material to its Expert.

23 8. PROSECUTION BAR

24 Absent written consent from the Producing Party, any individual who
25 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be
27 involved in the prosecution of patents or patent applications relating to the subject
28 matter of this action, including without limitation the patents asserted in this action

1 and any patent or application claiming priority to or otherwise related to the patents
2 asserted in this action, before any foreign or domestic agency, including the United
3 States Patent and Trademark Office (“the Patent Office”). For purposes of this
4 paragraph, “prosecution” includes directly or indirectly drafting, amending,
5 advising, or otherwise affecting the scope or maintenance of patent claims. To
6 avoid any doubt, “prosecution” as used in this paragraph does not include
7 representing a party in which a patent is challenged before a domestic or foreign
8 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or
9 *inter partes* reexamination). This Prosecution Bar shall begin when access to
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
11 CONFIDENTIAL – SOURCE CODE” information is first received by the affected
12 individual and shall end two (2) years after final termination of this action.

13 9. SOURCE CODE

14 (a) To the extent production of source code becomes necessary in this
15 case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL
16 – SOURCE CODE” if it comprises or includes confidential, proprietary or trade
17 secret source code.

18 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
19 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the
21 Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the
22 individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

24 (c) Any source code produced in discovery shall be made available for
25 inspection, in a format allowing it to be reasonably reviewed and searched, during
26 normal business hours or at other mutually agreeable times. Polaris has requested
27 that VIZIO make source code available for inspection at Quinn Emanuel Urquhart
28 & Sullivan’s San Francisco office. VIZIO does not agree to that location and has

1 agreed to make source code available in Quinn Emanuel Urquhart & Sullivan's Los
2 Angeles office. The parties dispute the location where source code will be made
3 available by VIZIO and may present that dispute to the Court for resolution. The
4 source code shall be made available for inspection on a secured computer in a
5 secured room without Internet access or network access to other computers, and the
6 Receiving Party shall not copy, remove, or otherwise transfer any portion of the
7 source code onto any recordable media or recordable device. The Producing Party
8 may visually monitor the activities of the Receiving Party's representatives during
9 any source code review, but only to ensure that there is no unauthorized recording,
10 copying, or transmission of the source code.

11 (d) The Receiving Party may request paper copies of limited portions of
12 source code that are reasonably necessary for the preparation of court filings,
13 pleadings, expert reports, or other papers, or for deposition or trial, but shall not
14 request paper copies for the purpose of reviewing the source code other than
15 electronically as set forth in paragraph (c) in the first instance. The Producing Party
16 shall provide all such source code in paper form within 48 hours, including bates
17 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." The
18 Producing Party may challenge the amount of source code requested in hard copy
19 form pursuant to the dispute resolution procedure and timeframes set forth in
20 Paragraph 6 whereby the Producing Party is the "Challenging Party" and the
21 Receiving Party is the "Designating Party" for purposes of dispute resolution.

22 (e) The Receiving Party shall maintain a record of any individual who has
23 inspected any portion of the source code in electronic or paper form. The Receiving
24 Party shall maintain all paper copies of any printed portions of the source code in a
25 secured, locked area. The Receiving Party shall not create any electronic or other
26 images of the paper copies and shall not convert any of the information contained in
27 the paper copies into any electronic format. The Receiving Party shall only make
28 additional paper copies if such additional copies are (1) necessary to prepare court

1 filings, pleadings, or other papers (including a testifying expert's expert report), (2)
2 necessary for deposition, or (3) otherwise necessary for the preparation of its case.
3 Any paper copies used during a deposition shall be retrieved by the Producing Party
4 at the end of each day and must not be given to or left with a court reporter or any
5 other unauthorized individual.

6 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
11 CONFIDENTIAL – SOURCE CODE," that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall include
17 a copy of this Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.²

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order shall not produce any information designated in this
22 action as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
23 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the
24

25
26 ² The purpose of imposing these duties is to alert the interested parties to the
27 existence of this Protective Order and to afford the Designating Party in this case an
28 opportunity to try to protect its confidentiality interests in the court from which the
subpoena or order issued.

1 court from which the subpoena or order issued, unless the Party has obtained the
2 Designating Party's permission. The Designating Party shall bear the burden and
3 expense of seeking protection in that court of its confidential material – and nothing
4 in these provisions should be construed as authorizing or encouraging a Receiving
5 Party in this action to disobey a lawful directive from another court.

6 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
7 PRODUCED IN THIS LITIGATION

8 (a) The terms of this Order are applicable to information produced by a
9 Non-Party in this action and designated as "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
11 CODE." Such information produced by Non-Parties in connection with this
12 litigation is protected by the remedies and relief provided by this Order. Nothing in
13 these provisions should be construed as prohibiting a Non-Party from seeking
14 additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party's confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party's
18 confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-
20 Party that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the Protective
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific
24 description of the information requested; and

25 3. make the information requested available for inspection by the
26 Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this
28

1 court within 14 days of receiving the notice and accompanying information, the
2 Receiving Party may produce the Non-Party's confidential information responsive
3 to the discovery request. If the Non-Party timely seeks a protective order, the
4 Receiving Party shall not produce any information in its possession or control that
5 is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court.³ Absent a court order to the contrary, the Non-Party
7 shall bear the burden and expense of seeking protection in this court of its Protected
8 Material.

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Protective Order, the Receiving Party must immediately (a) notify in writing the
13 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
14 all unauthorized copies of the Protected Material, (c) inform the person or persons
15 to whom unauthorized disclosures were made of all the terms of this Order, and (d)
16 request such person or persons to execute the "Acknowledgment and Agreement to
17 Be Bound" that is attached hereto as Exhibit A.

18 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
22 protection, the obligations of the Receiving Parties are those set forth in Federal
23 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
24 whatever procedure may be established in an e-discovery order that provides for
25 _____

26
27 ³ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
protect its confidentiality interests in this court.

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in a stipulated
5 protective order submitted to the court.

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the court in the future.

9 14.2 Right to Assert Other Objections. No Party waives any right it
10 otherwise would have to object to disclosing or producing any information or item
11 on any ground not addressed in this Protective Order. Similarly, no Party waives
12 any right to object on any ground to use in evidence of any of the material covered
13 by this Protective Order.

14 14.3 Export Control. Disclosure of Protected Material shall be subject to all
15 applicable laws and regulations relating to the export of technical data contained in
16 such Protected Material, including the release of such technical data to foreign
17 persons or nationals in the United States or elsewhere. The Producing Party shall be
18 responsible for identifying any such controlled technical data, and the Receiving
19 Party shall take measures necessary to ensure compliance.

20 14.4 Filing Protected Material. Without written permission from the
21 Designating Party or a court order secured after appropriate notice to all interested
22 persons, a Party may not file in the public record in this action any Protected
23 Material.

24 15. FINAL DISPOSITION

25 Within 60 days after the final disposition of this action, as defined in
26 paragraph 4, each Receiving Party must return all Protected Material to the
27 Producing Party or destroy such material. As used in this subdivision, "all Protected
28 Material" includes all copies, abstracts, compilations, summaries, and any other

1 format reproducing or capturing any of the Protected Material. Whether the
2 Protected Material is returned or destroyed, the Receiving Party must submit a
3 written certification to the Producing Party (and, if not the same person or entity, to
4 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
5 appropriate) all the Protected Material that was returned or destroyed and (2)
6 affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing
10 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
11 reports, attorney work product, and consultant and expert work product, even if
12 such materials contain Protected Material. Any such archival copies that contain or
13 constitute Protected Material remain subject to this Protective Order as set forth in
14 Section 4.

15 **IT IS SO STIPULATED**, through Counsel of Record.

17 Dated: 5/10/2019

/s/ Robert F. Kramer

Robert F. Kramer
Counsel for Plaintiff

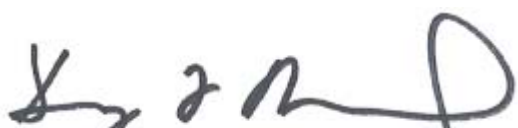
20 Dated: 5/10/2019

/s/ Zachariah Summers

Zachariah Summers
Counsel for Defendant

23 **IT IS ORDERED** that the forgoing Agreement is approved.

26 Dated: May 14, 2019



Honorable Douglas F. McCormick
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Protective Order that was issued
6 by the United States District Court for the Central District of California on _____
7 [date] in the case of *Polaris PowerLED Technologies, LLC v. VIZIO, Inc.*, Case No.
8 8:18-cv-01571-JVS (DFMx). I agree to comply with and to be bound by all the
9 terms of this Protective Order, and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms of
16 this Protective Order, even if such enforcement proceedings occur after termination
17 of this action.

18 I hereby appoint _____ [print or type full
19 name] of _____ [print or type full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Protective Order.

23
24 Date: _____ Signature: _____
[signature]

25
26 Printed name: _____
[printed name]

27
28 City and State where sworn and signed: _____